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EXAMINER	
ZHANG, SHIRLEY X	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHRISTOPHE PREGUICA and NICHOLAS REBIERRE

Appeal 2009-014862
Application 10/787,145
Technology Center 2400

Before MAHSHID D. SAADAT, ROBERT E. NAPPI,
and JASON V. MORGAN, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from the final rejection of claims 1-4, which constitute all the claims pending in this application. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

Introduction

Appellants' invention relates to resolution of addresses in Domain Name Servers (DNS) associated with telecommunication networks using the IPv6 (Internet Protocol, version 6) protocol stack by allowing the network send out a data stream using the most efficient and optimum address. (*See* Spec. 1:4-7 and 4:2-2-4).

Exemplary independent claim 1 reads as follows:

> 1. A domain name server for a data network utilizing the IPv6 protocol stack, said domain name server including:
>
> means for receiving requests adapted to receive a request containing an IPv6 address of a first network element and a domain name;
>
> means for returning to the sender of the said request a response containing one or more addresses associated with a second network element corresponding the said domain name; and
>
> address sequencing means, for sequencing, as a function of said IPv6 address of the first network element, a plurality of IPv6 addresses associated with said second network element, and for putting one or more IPv6 addresses associated with said second network element in the order of the sequence in said response.

Rejections

Claim 1 stands rejected under 35 U.S.C. § 112, second paragraph (Ans. 4-5).

Claims 1-4 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Draves (Richard Draves, "*Default Address Selection for IPv6*," Internet Engineering Task Force (IETF), 2002), in view of Kavanagh (US 6,748,434), and Moore (the email message posted by Keith Moore on the IETF IPv6 Operations (v6ops) Working Group's discussion board on November 18, 2002).

ANALYSIS

Rejection under 35 U.S.C. § 112, second paragraph

The Examiner finds that the limitation "means for returning to **the sender**" recited in claim 1 has insufficient antecedent basis (Ans. 5). The Examiner further asserts that:

> [r]egardless of whether one of ordinary skill in the art could reasonably ascertain the scope of the claim element "the sender", the said claim element clearly lacks explicit antecedent basis in the claim, making the claim noncompliant with 35 U.S.C. § 112 2nd paragraph [sic].
>
> (Ans. 11).

Appellants contend that the first element of claim 1 is recited as "means for receiving requests adapted to receive a request" whereas the second means is "for returning to the sender of the said request a response" (App. Br. 10). We agree with Appellants' reasoning and rebuttal that "the sender of the said request" is evident from reading the two parts of the claim to be the sender of the request in the first element of the claim (*id.*), such that one of ordinary skill in the art could reasonably ascertain the scope of the claim (App. Br. 11).

Therefore, we do not sustain the rejection of claim 1 under the second paragraph of 35 U.S.C. § 112.

Rejection under 35 U.S.C. § 103

The Examiner relies on Draves for disclosing all the elements of the claimed domain name server except for means for address sequencing on the DNS server and address selection in an IPv6 transition network, for which the Examiner relies on Kavanagh and Moore (Ans. 6-7). In response to Appellants' argument (App. Br. 12-13) that Draves does not teach or suggest

the claimed sequencing, the Examiner asserts (Ans. 14-15) that it is the combination of Kavanagh and Moore with Draves that suggests the claimed address sequencing means.

We agree with and adopt the Examiner's findings and rationale provided in response to Appellants' contentions (App. Br. 12-16; Reply Br. 7-8). We also note that, as stated by the Examiner (Ans. 14), the proposed rejection is based on the combination of Draves, Kavanagh, and Moore, and Appellants' challenge to the references individually is not convincing of error in the Examiner's position. One cannot show nonobviousness by attacking references individually where the rejections are based on combination of references. *See In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986); *In re Keller*, 642 F.2d 413, 425 (CCPA 1981).

Regarding Appellants' contentions challenging the propriety of combining the references (App. Br. 16-20), we agree with the Examiner's analysis and reasoning. We specifically find that the Examiner has articulated, with some rational underpinning (*see* Ans. 7-8 and 15), how the claimed features are met by the reference teachings and how it would have been obvious to combine the teachings of Kavanagh and Moore with Draves. *See KSR Int'l Co. v. Teleflex Inc.*, 550 U.S. 398, 418.

CONCLUSIONS

On the record before us, we conclude that the Examiner has erred in rejecting claim 1 being indefinite. However, we reach the opposite conclusion with respect to the rejection of claim 1 as obvious over Draves, Kavanagh, and Moore, because the references teach or suggest all the claim limitations. Therefore, we do not sustain the 35 U.S.C. § 112, second

paragraph, rejection of claim 1, but we sustain the 35 U.S.C. § 103 Rejection of claim 1, and of claims 2-4 dependent thereon, which are not separately argued (*see* App. Br. 21-22).

DECISION

The Examiner's decision rejecting claims 1-4 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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